IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 503 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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MOHMAD AMIN ABDULSATTAR BOMBAYWALA - Appellant(s)
Versus
BLUE BIRD AGENCIES & 2 - Defendant(s)

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Appearance :
MS. RANE for Appellant(s) : 1,
MR GAUTAM S PATEL for Defendant(s) : 1 - 2.
MR SV RAJU for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 11/08/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal, Valsad passed in M.A.C.P. No.53 of 1982 dated 16th August, 1983 whereby the Tribunal dismissed the said petition.

2.0 The brief facts of the case are that on 07.05.1981, when the present appellant was driving a tempo owned by the present appellant

Nos. 1 and 2 as their employee-driver, the said tempo met with an accident. On account of the said accident, the appellant received serious bodily injuries, and therefore, he filed a petition claiming an amount of Rs.50,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Heard. It is not in dispute that the tempo was owned by the opponent No.1-a partnership firm of which opponent No.2 is a partner and that they employed the appellant to drive the said tempo. The appellant in his claim petition before the Tribunal stated that on the day of accident when he was driving the said tempo, one girl suddenly came before the tempo and in order to save her he took the tempo to the further left hand side and the tempo dashed with a pole standing on the side of the road.

However, in his deposition he has controverted his own story stating that when he saw a girl running from right hand side, he applied the brakes of the tempo and at that time tempo mounted over a stone and dashed with the pole. Hence, in view of the fact that the appellant narrated two stories contradictory to each other, the Tribunal did not believe him and came to the conclusion that the appellant-himself was responsible for the accident in question, and hence, he is not entitled to claim compensation under the Motor Vehicles Act, 1988. The Tribunal further observed that the appellant has also failed to prove the vicarious liability of the owner to pay him some amount towards compensation, and hence, there is no point in referring the matter before the Authority under the provisions of the Workmen's Compensation Act.

3.1 In support of the aforesaid observation made by the Tribunal in the impugned judgment and award, learned Advocate for the opponents has

placed reliance on a decision of the Apex Court in the case of ***"National Insurance Co. Ltd. Vs. Prembai Patel and Others"*** reported in (2005) 6 SCC 172 wherein at Para-6, the Apex Court held as under,

> "**(6).** A person, who has sustained injury or where death has resulted from an accident all or any of the legal representatives of the deceased can claim compensation by moving an application under Section 166 of the Act by filing a claim petition before the Motor Accident Claims Tribunal. Section 3 of the Workmen's Compensation Act lays down that if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of Chapter II of the said Act. Section 167 of the Motor Vehicles Act, 1988 lays down that notwithstanding anything contained in the Workmen's Compensation Act, 1923 where the death of, or bodily injury to, any person gives rise to a claim for compensation under the Act and also under the Workmen's Act, the person entitled to compensation without prejudiced to the provisions of chapter X claim such compensation under either of those Acts but not under both. The claim petition had been filed by Respondents 3 to 6 claiming compensation for the death of Sunder Singh, who was an employee of Respondent No.2, in an accident arising out of and in the course of his employment. Therefore, they could

> claim compensation under either of the Acts. Buty they chose the forum provided under the Motor Vehicles Act. In a petitioner under the Workmen's Act the injured or the legal heirs of the deceased workmen have not to establish negligence as a pre-condition for award of compensation. But the claim petition before the Motor Accident Claims Tribunal is an action in tort and the injured or the legal representatives of the deceased have to establish by preponderance of evidence that there was no negligence on the part of the injured or deceased and they were not responsible for the accident. The exception to this general rule is given in Section 140 of the Act where the legislature has specifically made provisions for payment of compensation on the principle of no-fault liability."

3.2 However, the learned Advocate for the appellant has contested the aforesaid observation made by the Tribunal by placing reliance on a decision of the Apex Court in the case of ***"Ramashray Singh Vs. New India Assurance Co. Ltd. And Others"*** reported in (2003)10 SCC 664 wherein it was observed that under Section 147(1)(b) proviso and Section 146 of the Motor Vehicles Act, 1988 the expression 'Third Party Risk' as specified in sub-clauses (i) and (ii) of Section

147(1)(b) **covers only a driver, a conductor or an examiner of tickets** and no other employee such as cleaner(khalasi), and mere fact of insurance policy specifying that insurance had been paid by the appellant owner for “seating capacity including driver and cleaner” (13 passengers + 1 driver)does not meant that cleaner could be included as passenger for imposing liability on the Insurance Company.

3.3 In the case on hand, it is an admitted fact that the appellant was employed by the opponent Nos. 1 and 2 as driver of the said tempo. It is, also, not in dispute that the appellant-driver is covered under the insurance policy of the vehicle in question. Hence, in view of the principle laid down by the Apex Court in the case of ***Ramashray Singh*** (Supra) and the fact that the appellant-driver was covered under the insurance policy of the tempo, the observation made by the Tribunal that the appellant is not entitled to claim compensation under the provisions of Workmen's Compensation

Act, 1923 requires to be reversed. I am, therefore, of the opinion that the ends of the justice would met by awarding an amount of Rs.25,000/- along with interest at the rate of six per cent from the date of application towards compensation, taking into consideration the fact that the appellant was aged about 28 years and was earning Rs.300/- to Rs.400/- per month at the relevant time.

4.0 In the result, the appeal is partly allowed. The appellant shall be entitled to an amount of Rs.25,000/- with interest at the rate of six per cent from the date of application under the provisions of Workmen's Compensation Act, 1923. No order as to costs.

(K.S. Jhaveri,J.)

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